

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**DUANE MOORE,**

**Petitioner,**

**v.**

**Civil Action No. 2:10cv118**

**JOEL ZIEGLER, Warden,**

**Respondent.**

**ORDER**

On March 16, 2011, Magistrate Judge James E. Seibert filed his Report and Recommendation (“R&R”)(Doc. 23), wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the R&R. No objections to the R&R have been filed. Accordingly, this Court will proceed with consideration of the R&R reviewing for clear error.<sup>1</sup>

Upon examination of the report from the Magistrate Judge, it appears to this Court that the issues raised by the Petitioner’s Application for Habeas Corpus, filed pursuant to 28 U.S.C. § 2241, were thoroughly considered by Magistrate Judge Seibert in his R&R. As found by the Magistrate Judge, a petition for a writ of habeas corpus is not the proper vehicle for the claims made by petitioner. This Court, upon a review for clear error, is of the opinion that the R&R accurately reflects the law applicable to this case. Therefore, it is

---

<sup>1</sup>The failure of a party to object to a R&R waives the party’s right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See ***Wells v. Shriners Hospital***, 109 F.3d 198, 199-200 (4th Cir. 1997); ***Thomas v. Arn***, 474 U.S. 140, 148-153 (1985).

**ORDERED** that Magistrate Judge Seibert's R&R (Doc. 23) be, and the same hereby is, **ADOPTED**. Accordingly, it is

**ORDERED** that the respondent's Motion to Dismiss or, in the Alternative for Summary Judgment (Doc. 19) shall be, and the same hereby is, **GRANTED**. It is further

**ORDERED** that the petitioner's Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus (Doc. 1) shall be, and the same hereby is **DISMISSED WITHOUT PREJUDICE** to his right to file a civil rights action, should he so desire. It is further

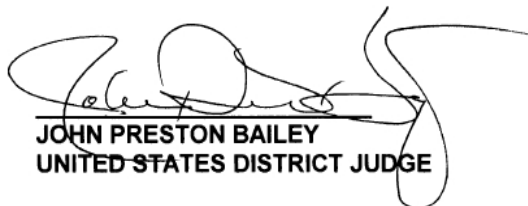
**ORDERED** that the Clerk shall enter judgment for the respondent. It is further

**ORDERED** that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

**ORDERED** that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to all parties appearing herein.

**DATED:** April 5, 2011.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE